

BERANBAUM MENKEM BEN-ASHER & BIERMAN, LLP
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Attorneys for Plaintiff Brian Wolin as Administrator
of the Estate of Richard Wolin

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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**BRIAN WOLIN AS ADMINISTRATOR OF
THE ESTATE OF RICHARD WOLIN,**

Plaintiff,

:
Index No.
CV-02-3119(CPS)(MDG)

:
**DECLARATION OF
MARK H. BIERMAN
IN SUPPORT OF
OBJECTIONS TO
ORDER OF
MAGISTRATE
MARILYN D. GO DATED
SEPTEMBER 8, 2004**

-v-

:
:
**THE NEW YORK CITY BOARD OF EDUCATION,
THE CITY OF NEW YORK, AND JOHN Q. ADAMS,
NEAL OPROMALLA , THOMAS W. HYLAND
VINCENT GRIPPO, THOMAS PENNELL AND
THERESA EUROPE Individually and as employees,
UNITED FEDERATION OF TEACHERS, and
MARVIN REISKIN, individually and as a representative.**

Defendants.

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Mark H. Bierman, Esq. declares pursuant to 28 U.S.C. § 1746 that the
following is true and correct under the penalties of perjury:

1. I am an attorney representing the plaintiff in this action.

2. This declaration is respectfully submitted in support of the plaintiff's objections to the order of Magistrate Judge Marilyn D. Go's order dated September 8, 2004 denying plaintiff's motion for relief as against defendants the New York City Board (Department) of Education, the City of New York, John Q. Adams, Neal Opromalla , Thomas W. Hyland Vincent Grippo, Thomas Pennell and Theresa Europe ("City Defendants") pursuant to Rule 37 of the Federal Rules of Civil Procedure.

3. The Court is respectfully referred to the following document numbers or docket sheet entries which are contained in this courts electronic filing system:

A. Docket # 50: Notice of Motion Pursuant to Fed. R. Civ. Proc. Rule 37 to Strike Answer and other relief; Declaration of Mark H. Bierman.

B. Docket # 51: Plaintiff's Brief in Support of Rule 37 Motion

C. Docket # 52: Exhibits A-Q to Declaration of Mark H. Bierman in support of Rule 37 Motion.

D. Order of Magistrate Judge Marilyn D. Go entered September 9, 2004.

4. City Defendants failed to file papers in opposition to the motion as required by Local Rule 6.1.

5. Plaintiff objects to each and every part of Magistrate Go's order dated September 8, 2004 denying Plaintiff's motion for the reasons more fully set forth in the accompanying memorandum of law and in the Plaintiff's Rule 37 motion.

6. Plaintiff's attorneys expended approximately twenty-three hours in connection with said motion and in seeking to gain compliance after the expiration of the last extension and prior to making the motion and the approximately six hours expended in preparing these objections. These hours do not include the scores of hours spent on

plaintiff's five prior applications relating to City Defendants discovery defaults. I have been engaged in the active practice of law for approximately 22 years, and am currently a partner at Beranbuam Menken BenAsher & Bierman, LLP, warranting a reasonable hourly rate of \$350.00 per hour.

7. These objections are being filed on September 17, 2004 within the 10 day period set forth in Rule 72(b) of the Federal Rules of Civil Procedure, .

Dated: New York, New York
September 17, 2004

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MARK H. BIERMAN